FILED
JAN 7 1993
OFFICE OF THE CLERK

No. 93-655

IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

EVANSTON HOSPITAL,

Petitioner,

v.

ROBERT V. HAUCK, LOUIS W. SULLIVAN, Secretary of the United States Department of Health and Human Services, PHIL BRADLEY, Director of the Illinois Department of Public Aid, and CORBOY & DEMETRIO, P.C.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

RESPONDENT BRADLEY'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Printed by Authority of the State of Illinois (P.O. 35995—60—1-10-94)

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QUESTION PRESENTED FOR REVIEW

Whether the United States Court of Appeals for the Seventh Circuit, in affirming the District Court's dismissal of Plaintiff's suit for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6), erred in holding that the refusal of the Illinois Department of Public Aid to accept a hospital's refund of Medicaid payments previously claimed and accepted for care of a medical assistance recipient did not conflict with federal law.

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STATEMENT OF THE CASE

I. NATURE OF THE CONTROVERSY

Defendant Robert V. Hauck, the victim of an electrical accident, was hospitalized at Plaintiff Evanston Hospital in 1985 and 1986 for treatment of his injuries. Complaint for Declaratory Judgment ("Complaint"), ¶13 (R.1-1). Total hospital charges for his stay were $270,760.24. Complaint, ¶13 (R.1-1). Evanston Hospital billed and received $113,424.00 in payment from the Illinois Department of Public Aid ("IDPA"), as administrator of Illinois' Medicaid program, for medical services rendered to Hauck. Complaint, ¶¶15-16 (R.1-1).

Meanwhile, Hauck retained the law firm of Corboy & Demetrio to prosecute a personal injury lawsuit on his behalf in connection with the electrical accident. Complaint, ¶¶6, 9 (R.1-1). Pursuant to Illinois' Hospital Lien Act, 770 ILCS 35/1 (1993), Evanston Hospital filed a hospital lien for its charges in Hauck's tort action. Complaint, ¶9 (R.1-1). In 1991, this action concluded with a $9,600,000 award in Hauck's favor. Complaint, ¶9 (R.1-1). Afterwards, Evanston Hospital sought to refund its Medicaid payments to IDPA in order to recover its full private pay charges from Hauck's award. Complaint, ¶10 (R.1-1). Because Evanston Hospital had already accepted Medicaid payment for care rendered to Hauck and IDPA had previously obtained reimbursement of its Medicaid payments by executing its own lien on Hauck's award, IDPA refused to accept the Hospital's proffered Medicaid refund. Complaint, ¶33 (R.1-1).

II. COURSE OF PROCEEDINGS IN THE DISTRICT AND APPELLATE COURTS

Evanston Hospital filed a declaratory judgment action in the United States District Court for the Northern District of Illinois against Hauck, Louis Sullivan, Secretary of the United States Department of Health and Human Services ("HHS"), Phil Bradley, IDPA's Director, and Corboy and Demetrio. (R.1-1.) Evanston Hospital sought a declaration that it could refund its Medicaid payments to IDPA and obtain full payment of its private pay charges from Hauck. Complaint, pp. 11-12. (R.1-1). Evanston Hospital contended that there was a conflict between Illinois and federal law concerning whether a medical services provider ~~that has~~ already claimed and accepted Medicaid funds for care of a program beneficiary can later recover full payment of its private pay charges from the beneficiary's tort judgment by compelling IDPA to accept its refund of the prior Medicaid payments. Complaint, ¶10 (R.1-1).

Granting Defendants' motions to dismiss, the District Court dismissed all counts of Evanston Hospital's Complaint. Judgment in a Civil Case dated August 19, 1992 (R.36). The District Court determined that Evanston Hospital failed to state a claim upon which relief could be granted, since Illinois Medicaid law did not conflict with federal Medicaid law or policy. *Evanston Hospital v. Hauck*, 92 C 732 (N.D. Ill. 1992), Memorandum Opinion enclosed as pages 9-14 of Appendix to Petition for Writ of Certiorari.

Evanston Hospital appealed the dismissal of its action to the United States Court of Appeals for the Seventh Circuit. On July 30, 1993, the Court of Appeals affirmed the District Court's dismissal of Evanston Hospital's suit for failure to state a claim, holding that Illinois law requiring the Hospital to accept IDPA's Medicaid payment as full payment for services rendered to Hauck did not conflict with federal law. *Evanston Hospital v. Hauck*, 1 F.3d 540 (7th Cir. 1993).

Evanston Hospital filed its Petition for Writ of Certiorari with this Court on October 25, 1993.

REASONS FOR DENYING CERTIORARI

IDPA refused to accept Evanston Hospital's proffered refund of Medicaid payments received for Hauck's medical care because, under Illinois law, a Medicaid vendor payment constitutes payment in full for the services covered thereby and acceptance of the payment bars the vendor from obtaining additional payment from the recipient or any other person. 305 ILCS 5/11-13 (1993). Evanston Hospital argues that IDPA's refusal to accept its Medicaid refund, which in turn prevented the Hospital from recovering its full private pay charges from Hauck's personal injury award, conflicts with the federal Medicaid Act's third party liability provisions. 42 U.S.C. 1396a(a)(25). Calling Evanston Hospital's position "farfetched," the Seventh Circuit Court of Appeals affirmed the District Court's dismissal of the Hospital's suit. *Evanston Hospital v. Hauck*, 1 F.3d 540, 542 (7th Cir.

1993). In holding that Evanston Hospital has failed to even state a viable claim upon which relief can be granted, both courts below agreed that the Hospital failed to identify any conflict between state and federal law. *Evanston Hospital v. Hauck*, No. 92 C 732 (N.D. Ill. 1992), Appendix to Petition for Writ of Certiorari, page 10; 1 F.3d at 542.

Evanston Hospital, in now seeking a writ of certiorari, has failed to demonstrate any error in the two lower court decisions, since it has once again failed to identify any conflict between state and federal Medicaid law. Indeed, Evanston Hospital admits that "Neither the Social Security Act nor HHS' regulations expressly address the situation of the provider's rights where a third party is adjudicated liable for the medicaid beneficiary's medical bills subsequent to the payment of the claim by the state medicaid agency." Petition for Writ of Certiorari, p. 8. Having conceded this, Evanston Hospital can point to no statutory or regulatory provision investing it with any federal right to compel IDPA to accept a refund of its Medicaid payments. It can be of no avail for Evanston Hospital to persist in arguing, as it has throughout the proceedings in this case, that nothing in federal law *prohibits* IDPA from accepting its refund. Unless federal law affirmatively *requires* IDPA to accept its refund, Evanston Hospital has failed to establish any entitlement to legal relief.

The federal Medicaid Act's third party liability provisions do not require IDPA to accept Evanston Hospital's refund. Under the Medicaid Act, a state plan for medical

assistance must provide that the administering state agency will take all reasonable measures to ascertain the legal liability of third parties to pay for care and services available under the plan and that, in any case where such legal liability is found to exist after medical assistance has been made available on behalf of the individual, the state agency will seek reimbursement for such assistance to the extent of the third party's legal liability. 42 U.S.C. §1396a(a)(25)(A) and (B). Significantly, after a Medicaid payment has been made, it is the "state agency," not the medical provider, who is statutorily mandated to pursue Medicaid reimbursement from financially liable third parties. Furthermore, the state agency is to seek Medicaid reimbursement from third parties, not medical providers. The Medicaid Act is utterly devoid of any language that could reasonably be construed as requiring IDPA to relinquish its third party recovery rights to Evanston Hospital so that the Hospital can recover its full private pay charges from its patient's personal injury award. In fact, the Act itself explicitly restricts provider recoveries from Medicaid recipients:

> In the case of an individual who is entitled to medical assistance under the State [Medicaid] plan for which a third party is liable for payment, the person furnishing the service may not seek to collect from the individual (or any financially responsible relative or representative of that individual) payment of an amount for that service * * *.

42 U.S.C. §1396a(a)(25)(C).

Federal regulations amplify the statutory provisions of the Medicaid Act, but do not evince any requirement

that IDPA must accept provider refunds. If a state Medicaid agency has established the probable existence of third party liability at the time a provider reimbursement claim is filed, the agency must reject the claim and, when the amount of third party liability is determined, need only pay the claim to the extent that the amount allowed under the agency's payment schedule exceeds the third party's payment. 42 CFR §433.139(b)(1). If, however, as in the instant case, the probable existence of third party liability cannot be established or third party benefits are not available to pay the Medicaid recipient's medical expenses at the time a provider claim is filed, the state agency must pay the provider the full amount allowed under its payment schedule. 42 CFR §433.139(c). If the agency learns of the existence of a liable third party after a provider's claim has been paid, or benefits become available from a third party after a claim has been paid, the agency must seek recovery of reimbursement. 42 CFR §433.139(d)(2). This recovery is to be sought from the liable third party and not from the provider, for 42 CFR §433.139(f) provides that "An agency must seek reimbursement *from a liable third party* on all claims for which it determines that the amount it reasonably expects to recover will be greater than the cost of recovery." [emphasis added]

The only express authority Evanston Hospital cites in support of its argument that IDPA must accept its refund is an HHS response to a comment upon promulgation of one of its rules. A commenter asked HHS what providers should do if they "receive payment on a title IV-D claim from a liable third party after Medicaid has been billed." HHS responded that:

> The provider is . . . required to reimburse Medicaid in connection with Medicaid covered services that the provider has furnished. At State option, the provider may either return to the Medicaid agency the amount Medicaid paid or may contact the Medicaid agency, which will in turn offset the amount against future Medicaid payments to the provider.

55 F.R. 1426. This HHS response, however, pertains only to a situation involving provider reimbursement of Medicaid payments received pursuant to a "title IV-D claim." Title IV-D is a child support enforcement program, 42 U.S.C. §651 *et seq.*, and a third party liable for medical payments under title IV-D is a parent obligated to pay child support at the time a Medicaid claim is filed.

Both the Medicaid Act itself and its implementing regulations differentiate title IV-D situations from other third party liability situations and treat them specially. Under the Act, when medical services are provided to an individual on whose behalf child support enforcement is being carried out by the state, the state must pay for the services without regard to any third party liability if the liable third party is a parent obliged to pay support. 42 U.S.C. §1396a(a)(25)(F)(i). Likewise, a title IV-D situation constitutes an exception under 42 CFR §433.139(b), where a state must otherwise refuse payment of provider claims where probable third party liability has previously been established. 42 CFR §433.139(b)(3)(ii). It is only in this special Title IV-D situation, where the state is making a Medicaid payment to a provider that it is otherwise not required to make, that the provider is in turn re-

quired to reimburse Medicaid. This situation is readily distinguishable from that presented by the instant case, for this case does not present an instance of title IV-D third party liability. The source of third party liability here is not a parent, but a tortfeasor. Nor does this case present a situation where probable liability was established at the time a Medicaid claim was filed. Rather, third party liability was only established long afterwards through successful resolution of litigation. Therefore Evanston Hospital was never required to repay any Medicaid to IDPA and IDPA was never required to accept any Medicaid refund from the Hospital.

Completely refuting any assertion by Evanston Hospital that IDPA's refusal to accept its refund contravened the Medicaid Act is a federal regulation mandating provider acceptance of state payment as payment in full. Virtually echoing Illinois' statute verbatim, 305 ILCS 5/11-13 (1993), this federal regulation states, "A State plan *must* provide that the Medicaid agency *must* limit participation in the Medicaid program to providers who accept, as payment in full, the amounts paid by the agency plus any deductible, coinsurance or copayment required by the plan to be paid by the individual." [emphases added] 42 CFR §447.15. Thus providers, such as Evanston Hospital, who choose to treat Medicaid patients and then bill the state for that treatment, must accept payment at designated program rates. These providers cannot seek additional patient contributions above Medicaid limits under the guise of effecting recoveries from liable third parties, since only the state, as program payor, is statutorily empowered to seek third party reimbursement.

Plaintiff complains that IDPA's refusal of provider Medicaid refunds results in a windfall to program beneficiaries if the beneficiaries sue for and recover damages based on the provider's total private pay charges. Such a windfall, however, would be at the expense of the tortfeasor, not the medical provider. The medical provider receives exactly what it is entitled to when it decides to claim and accept Medicaid payment at program rates as payment in full for services rendered instead of awaiting the possibly successful outcome of its patient's lawsuit. The provider agrees to accept prompter and more certain, but lesser, Medicaid payment in exchange for surrendering the possible opportunity to subsequently recover its full charges from its patient's personal injury award. At any rate, as the Appellate Court observed in the instant case:

> It is true that under our decision today Hauck receives a windfall equal to the value of the medical care he received but for which the government did not pay. But someone was bound to receive a windfall in these circumstances, and Congress decided it should be the recipient of medical care, not the hospital.

1 F.2d at 544.

The Medicaid Act's third party liability provisions are not intended to benefit medical providers. Rather, they are merely designed to protect the federal and state fiscs from paying for medical care for which third parties are ultimately liable. After a provider's claim has been paid, the state Medicaid agency is required to pursue financial recovery from liable third parties, but is not required to

seek or accept repayment from providers. However, under Evanston Hospital's proposed scheme, which would require IDPA to accept provider refunds, a Medicaid provider could first enjoy the certainty of payment from IDPA at program rates and then remain free to later capitalize on originally contingent third party liability by refunding its prior payments to IDPA and obtaining its full private pay charges from its patient's personal injury award. Evanston Hospital wants to have its cake and eat it too. In essence, Evanston Hospital wants to treat the Medicaid payments it receives from IDPA as contingent interest-free loans which it may later decide to repay should a more advantageous source of payment subsequently become available from program beneficiaries. There is simply no basis in the federal Medicaid Act for requiring IDPA to operate the program as a loan bank for medical providers. IDPA's policy of requiring providers to accept Medicaid payments as payment in full of their charges does not conflict in any way with the federal Medicaid Act. On the contrary, IDPA's refusal of Evanston Hospital's proffered refund is fully consonant with all applicable federal Medicaid statutes and regulations.

CONCLUSION

For all of the foregoing reasons, Respondent PHIL BRADLEY respectfully urges this Court to deny EVANSTON HOSPITAL's Petition for Writ of Certiorari.

Respectfully submitted,

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